

**South Dakota Public Utilities Commission Meeting  
Tuesday, February 13, 2007, at 1:30 P.M.  
State Capitol Building, Room 468  
Pierre, South Dakota**

**MINUTES OF THE COMMISSION MEETING**

Chairman Dustin Johnson called the meeting to order. Present were: Vice Chairman Gary Hanson; Commissioner Steve Kolbeck; Commission Advisor Greg Rislov; Commission Attorneys Rolayne Wiest and John Smith; Staff Attorneys Karen Cremer and Kara Van Bockern; Staff Analysts Keith Senger, Harlan Best, Dave Jacobson, Nathan Solem and Bob Knadle; Consumer Affairs Supervisor, Deb Gregg; and Administrative Secretary Demaris Axthelm.

Also present were: Jim Wilcox, Xcel Energy; Brett Koenecke, May, Adam, Gerdes and Thompson, representing MCC Telephony of the Midwest, Inc. d/b/a Mediacom; and Rich Coit, South Dakota Telecommunications Association.

Joining the meeting by telephone were: Jean Calligan and Marv Sorenson, MidAmerican Energy Company; James Groft, Northern Valley Communications; Talbot Wieczorek, Gunderson, Palmer, Goodsell & Nelson, representing Sprint Communications Company L.P.; Mary Sisak, Blooston, Mordkofsky, Dickens, Duffy and Pendergast, representing, Swiftel Communications; Meredith Moore, Cutler and Donahoe representing, Interstate Telecommunications Cooperative, Inc.; James Overcash, Woods and Aitken representing, Interstate Telecommunications Cooperative, Inc.; Wendy Harper, Vantage Point Solutions; Colleen Sevold and Jason Topp, Qwest Corporation; Dave Ross, Otter Tail Power and John Chow and Phillip Zins, Xcel Energy.

**Consumer Reports**

**1. Status Report on Consumer Utility Inquiries and Complaints Received by the Commission. (Consumer Affairs: Deb Gregg)**

Ms. Deb Gregg reported that the Commission has received a total of 73 contacts since the last report was prepared for the January 23, 2007 Commission meeting. 9 of the contacts involved telecommunication services, 10 of the contacts involved electrical services, 14 contacts involved natural gas services, 5 contacts involved cellular phone service, 29 contacts were related to the Do Not Call Registry, and 6 contacts were related to issues not regulated by the PUC. In 2007, 99 of the 264 complaints have been resolved. In 2006, 2,161 of the 2,466 complaints received have been resolved.

**Electric**

**1. EL07-001 In the Matter of the filing by Xcel Energy for Approval of its Revised Rate Sheets for its Occasional Delivery Energy Service and Time of Delivery Energy Service. (Staff Analyst: Dave Jacobson, Staff Attorney: Kara Van Bockern)**

Mr. Jim Wilcox, Mr. Phil Zins and Mr. John Chow of Xcel Energy were responsible for this filing and were present or on the phone. Mr. Dave Jacobson of Commission Staff explained that the filing followed the format of previous cogeneration rate biennial update filings. It was explained that normally these filings are able to be reconciled with Xcel's PURPA 210 Biennial Report but that in this case Xcel utilized data updated through December 2006 which is more current than the most recent biennial report. Mr. Jacobson also stated that the company's incremental energy costs are derived from the company's PROSYM model which is what MDU uses to calculate its avoided costs. Mr. Jacobson recommended approval of the revised tariffs. Chairman Johnson inquired as to how much the proposed rates had changed from currently effective rates and the factors which caused such change. Mr. Jacobson provided the current rates and proposed rates and then discussed the issue of incremental energy costs, reasons why they are higher than average energy costs, and reasons why such incremental costs could increase based on what type of generation is being utilized by the company or what the cost of purchased power may be. Vice Chairman Hanson inquired as to the difference between the rate(s) Xcel charges cogeneration customers for power consumed vs. the rate paid to generators for power delivered to Xcel. Discussion of average vs. incremental costs ensued. Vice Chairman Hanson then inquired of Mr. Zins and Mr. Chow what effect mandates of the State of Minnesota may be having on these significantly increased costs. Mr. Zins replied that the lack of ability to build coal or nuclear plants was a significant factor in the increased rates but that renewable mandates were probably having little effect. Mr. Zins also replied to an inquiry by Commissioner Hanson that the proposed rates were very similar to Xcel rates effective in Minnesota and North Dakota but that he did not have immediate knowledge of the effective rates for other companies. Chairman Johnson and Commission advisor Mr. John Smith then inquired as to the cost and rate differential between the proposed Occasional Delivery meter charge and the Time of Delivery meter charge. Mr. Chow and Mr. Jacobson explained that the company now utilizes bi-directional meters in these applications thus avoiding the use of two meters. Costs reflected in this filing were the result of netting bi-directional meter costs against the meter charges collected under the customer's rate for usage purchased from the company. Commissioner Kolbeck then asked what might be done to contain the escalation of incremental energy costs depicted in this filing. Mr. Wilcox reiterated that these rates reflect what is paid to small cogenerators such as wind facilities for power they produce and that the company can reduce costs by minimizing fuel costs at any given time. Discussion also ensued as to how to determine the optimal mix of generation in order to minimize these costs. Chairman Johnson summed up the proposed rates as

good news, bad news; good news for small cogenerators and bad news for reflecting higher costs of company generated and purchased power.

**Commissioner Kolbeck moved to approve the revised rate sheets for Northern States Power in Docket EL07-001. Chairman Johnson seconded and Vice Chairman Hanson concurred. Motion passed 3-0**

**2. EL07-003 In the Matter of the Filing by MidAmerican Energy Company for Approval of Tariff Revisions. (Staff Analyst: Keith Senger, Staff Attorney: Karen Cremer)**

Ms. Jean Callaghan, MidAmerican Energy Company explained to the Commission that the revised billing format is a change in late payment language and the revision does not change how the late payment charge is calculated or when it's to be paid. Ms. Calligan said the change simply adds clarity to the late payment charge message. Mr. Keith Senger agreed with Ms. Calligan and recommended that the Commission approve the tariff revision with a February 13, 2007 effective date. Ms. Calligan explained that Dockets NG07-001 and EL07-003 had the same late payment language revisions.

**Vice Chairman Hanson moved to approve the tariff revision in Docket EL07-003 along with Docket NG07-001. Chairman Johnson seconded and Commissioner Kolbeck concurred. Motion passed 3-0**

**3. EL07-004 In the Matter of the Filing by Otter Tail Power Company for Approval of an Electric Service Agreement for the Supply of Bulk Interruptible Power between Otter Tail Power Company and Valley Queen Cheese Factory, Inc. (Staff Analysts: Dave Jacobson/Nathan Solem, Staff Attorney: Karen Cremer)**

Mr. Dave Ross of Otter Tail Power Company stated that they had a contract with Valley Queen Cheese that had expired at the end of the year and had asked for an extension that was granted by the Commission. Mr. Ross further stated that Valley Queen Cheese has now opted to go off the bulk interruptible rate and has elected to receive power under Otter Tail's large general service tariff rate. Mr. Nathan Solem agreed with Mr. Ross' statements and asked that the Commission approve the tariff revision.

**Chairman Johnson moved to approve the tariff revision. Commissioner Kolbeck seconded and Vice Chairman Hanson concurred. Motion passed 3-0**

**Natural Gas**

**1. NG07-001 In the Matter of the Filing by MidAmerican Energy Company for Approval of Tariff Revisions. (Staff Analyst: Keith Senger, Staff Attorney: Karen Cremer)**

Ms. Jean Calligan, MidAmerican Energy Company explained to the Commission that the revised billing format is a change in late payment language and the revision does not change how the late payment charge is calculated or when it's to be paid. Ms. Calligan said the change simply adds clarity to the late payment charge message. Mr. Keith Senger agreed with Ms. Calligan and recommended that the Commission approve the tariff revision with a February 13, 2007 effective date. Ms. Calligan explained that Dockets NG07-001 and EL07-003 had the same late payment language revisions.

**Vice Chairman Hanson moved to approve the tariff revision in Docket EL07-003 along with Docket NG07-001. Chairman Johnson seconded and Commissioner Kolbeck concurred. Motion passed 3-0**

**Telecommunications**

**1. TC04-126 In the Matter of the Filing by Midstate Telecom, Inc. for Approval of Revisions to its Intrastate Switched Access Tariff. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Harlan Best stated that the present Midstate Telecom rate is 11.5 cents and the LECA plus rate determined by the settlement stipulation was 12.25 cents and since the Midstate rate is less than the 12.25 cent rate in accordance with the Commission stipulations, that no refund be required. Staff recommends that Midstate not be required to give a refund with interest. Ms. Wendy Harper of Vantage Point agreed with staff and had no further comments.

**Vice Chairman Hanson moved to approve, not to require a refund with interest, and to close Docket TC04-126. Commissioner Kolbeck seconded and Chairman Johnson concurred. Motion passed 3-0**

**2. TC04-127 In the Matter of the Filing by Northern Valley Communications, LLC for Approval of Revisions to its Intrastate Switched Access Tariff. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Harlan Best recommended that Mr. James Groft explain to the Commission when Northern Valley Communications would propose to implement the 12.25 cent LECA plus rate since Northern Valley has had a rate of 12.5 cents since July 1<sup>st</sup> of 2006. Mr. Best stated that Northern Valley needs to reduce the rate to 12.25 cents and depending on when they implement this rate, would have

a impact as far as a refund being required. Mr. James Groft of Northern Valley Communications stated that effective January 1, 2007, the new rate would be 11.5 cents which would be lower than the 12.25 cent LECA plus rate. Mr. Groft also noted that the differences in the rates are very minimal and that there would be a very small refund due. Chairman Johnson asked if anyone has ever asked or thought that they should be entitled to a refund. Both Mr. Best and Mr. Groft stated that they have never been notified by anyone.

**Commissioner Kolbeck moved to not require a refund with interest and to close Docket TC04-127. Vice Chairman Hanson seconded and Chairman Johnson concurred. Motion passed 3-0**

**3. TC06-066 In the Matter of the Section 272 Biennial Report for Qwest Communications International, Inc. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Harlan Best stated that on June 9, 2006, the Commission received from Ernst & Young a Report of Independent Accountants on Applying Agreed-Upon Procedures regarding the section 272 biennial report for Qwest Communications International, Inc. Pursuant to section 272(d) of the Communications Act of 1934, as amended, the Commission requested comments on this report. No comments were received. Therefore, Mr. Best recommended that the Commission close Docket TC06-066. Mr. Jason Topp of Qwest agreed with Mr. Best's summary and agreed that Docket TC06-066 should be closed.

**Chairman Johnson moved to Close Docket TC06-006. Vice Chairman Hanson seconded and Commissioner Kolbeck concurred. Motion passed 3 - 0**

**4. TC06-175 In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration pursuant to the Telecommunications Act of 1996 to Resolve Issues Relating to an Interconnection Agreement with Interstate Telecommunications Cooperative, Inc. (Staff Analyst: Harlan Best, Staff Attorney: Kara Van Bockern)**

**5. TC06-176 In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration Pursuant to the Telecommunications Act of 1996 to Resolve Issues Relating to an Interconnection Agreement with Brookings Municipal Utilities d/b/a Swiftel Communications. (Staff Analyst: Harlan Best, Staff Attorney: Kara Van Bockern)**

Mr. Rich Coit of South Dakota Telecommunications Association (SDTA) asked if both Dockets TC06-175 and TC06-176 could be argued together and

Chairman Johnson agreed to combine Dockets TC06-175 and TC06-176. Mr. Coit asked the Commission for reconsideration and clarification of its last ruling. SDTA continues to believe that it should have been granted intervention pursuant to the state statutes and administrative rule. Mr. Coit explained to the Commission that other states do allow interventions in arbitration proceedings and that SDTA's intentions are not to broaden any of the issues. Mr. Coit stated that Sprint does have an industry impact and SDTA should have the ability to comment on any potential industry impact and to participate in offering any written comments, discuss legal issues and public policy issues. Mr. Talbot Wieczorek, representing Sprint told the Commissioners that there is no guaranteed constitutional due process for SDTA to participate in the hearing. Mr. Wieczorek further stated that arbitration between the two parties and SDTA should be restricted to the issues, not broadened. Mr. Wieczorek asked that the Commission deny SDTA's request for reconsideration. Mr. James Overcash, representing ITC, supported SDTA and commented that nothing has been classified as being confidential and that they operate under a confidential agreement and will continue to do so. Ms. Mary Sisak, representing Swiftel, stated that Swiftel does support SDTA's request and agrees with Mr. Overcash's understanding of the nature of confidentiality. Ms. Kara Van Bockern stated that staff believes that the industry positions are important but, staff also leans toward Arbitrations being between two parties. Ms. Van Bockern then stated that the questions the Commission needed to answer were who should be the parties to appear and what should the parties do. Ms. Rolayne Wiest recommended to the Commission, pursuant to ARSD 20:10:01:15.0 that SDTA may attend the hearing and may submit written comments in accordance with the briefing schedule. SDTA may also orally present its position on issues presented in this case if the Commission allows oral argument following briefing, and that the Commission deny SDTA's request that it be allowed access to confidential information.

**Chairman Johnson moved that SDTA has met the threshold of being allowed to appear and denied to be allowed access to confidential information. Commissioner Kolbeck seconded and Vice Chairman Hanson concurred. Motion passed 3-0**

- 6. TC06-178 In the Matter of the Application of Sprint Communications Company L.P. for Authority to Provide Local Exchange Services in Certain Rural Areas Served by Brookings Municipal Utilities d/b/a Swiftel Communications. (Staff Analyst: Nathan Solem, Staff Attorney: Kara Van Bockern)**
- 7. TC06-180 In the Matter of the Application of Sprint Communications Company L.P. for Authority to Provide Local Exchange Services in Certain Rural Areas Served by Interstate**

**Telecommunications Cooperative, Inc. (Staff Analyst: Nathan Solem, Staff Attorney: Kara Van Bockern)**

- 8. TC06-188 In the Matter of the Application of MCC Telephony of the Midwest, Inc. d/b/a Mediacom for a Certificate of Authority to Provide Interexchange and Local Exchange Services in the Brookings Exchange (Staff Analyst: Nathan Solem, Staff Attorney: Kara Van Bockern)**
- 9. TC06-189 In the Matter of the Application of MCC Telephony of the Midwest, Inc. d/b/a Mediacom for a Certificate of Authority to Provide Interexchange and Local Exchange Services in the Castlewood, Elkton, Estelline, Hayti, Lake Norden and White Exchanges (Staff Analyst: Nathan Solem, Staff Attorney: Kara Van Bockern)**

Ms. Kara Van Bockern recommended that staff set up a procedural schedule to follow since there are several different issues involved regarding if the applications are complete, determine what the time frames are, and to give each party involved the opportunity to have all questions answered. Mr. Keith Senger stated that the Commission has 60 days to act upon a completed application and if the Dockets proceed to a hearing the Commission has 120 days to act. Mr. Senger recommended that the Commission give guidance in this matter on how they would like staff to proceed for staff felt that all of the applications are not complete at this time. Chairman Johnson noted that the questions asked by staff on how to proceed involve Dockets TC06-178, TC06-180, TC06-188 and TC06-189 and these Dockets will be combined for the purpose of the Commission meeting. Bret Koenecke, representing Mediacom, stated that the amended application that was filed February 12 2007, on behalf of Mediacom is complete. Mary Sisak, representing Swiftel, stated Swiftel has not been served the amended application and therefore is unable to determine if Mediacom's amended application is complete. Mr. Wieczorek, representing Sprint, stated that Sprint would like to move forward with a procedural schedule. Mr. Coit, representing SDTA, concurred with staff and Mr. James Overcash, representing ITC, is also in favor of setting a procedural schedule.

**Chairman Johnson moved that Commission Counsel Ms. Rolayne Wiest set up a meeting for the purpose of setting a procedural schedule with the parties involved in TC06-178, TC06-180, TC06-188 and TC06-189. Commissioner Kolbeck seconded and Vice Chairman Hanson concurred. Motion passed 3-0**

- 10. TC06-195 In the Matter of the Application of ITI Inmate Telephone, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota (Staff**

**Analyst: Nathan Solem, Staff Attorney: Karen Cremer)**

Mr. Nathan Solem stated that on December 4, 2006, ITI Inmate Telephone, Inc. filed an application seeking a Certificate of Authority to offer interexchange services, including alternate operator services. Specifically, ITI will offer automated collect calling services to inmates of correctional facilities within the State of South Dakota. Mr. Solem further stated that the applicant has agreed to restrictions from accepting customer deposits or advance payments and from offering any prepaid services. The applicant has requested waivers of the following Alternate Operator Service rules to facilitate service at correctional facilities. These rules are:

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|------------------|---|
| 20:10:24:05 (4)  | posting notice at telephones required           |
| 20:10:24:05 (6)  | prohibiting call blocking                       |
| 20:10:24:05 (7)  | 911 services provided                           |
| 20:10:24:05 (8)  | transfers to another carrier required           |
| 20:10:24:05 (11) | its name, address, and phone number on any bill |

Also Mr. Solem stated that the applicant, ITI Inmate Telephone has met the requirements for the granting of a Certificate of Authority. Therefore, staff recommends that the Commission grant the waiver requests and issue ITI Inmate Telephone, Inc. an interexchange certificate of authority subject to the restrictions from offering any prepaid services and from collecting customer deposits or advanced payments without the prior approval of the Commission.

**Chairman Johnson moved to grant a Certificate of Authority to ITI Inmate Telephone, Inc with the waivers and restrictions from offering any prepaid services and collecting customer deposits or advanced payments. Vice Chairman Hanson seconded and Commissioner Kolbeck concurred. Motion passed 3-0**

**11. TC06-203 In the Matter of the Application of New Horizons Communications Corp. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota. (Staff Analyst: Keith Senger, Staff Attorney: Kara Van Bockern)**

Mr. Keith Senger stated that the applicant has requested a waiver from filing a cash flow statement as required by ARSD 20:10:24:02(8). Subsequently New Horizons Communications Corp. agreed to restrictions from accepting deposits and advanced payments and from offering any prepaid services including prepaid calling cards. Mr. Senger recommended that the Commission grant the waiver request and issue New Horizons Communications Corp. the authority to provide interexchange services, subject to restrictions.

Commissioner Kolbeck moved to grant the Certificate of Authority to New Horizons Communications Corp., subject to the restrictions recommend by staff. Vice Chairman Hanson seconded and Chairman Johnson concurred. Motion passed 3-0

**12. In the Matter of the Approval of Agreements in Dockets TC07-001, TC07-002 and TC07-005**

**TC07-001 In the Matter of the Filing for Approval of Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services between Qwest Corporation and Capital Telephone Company, Inc. (Staff Attorney: Kara Van Bockern)**

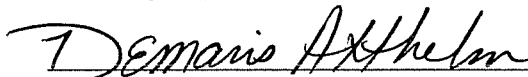
**TC07-002 In the Matter of the Filing for Approval of an Adoption Agreement between Qwest Corporation and American Fiber Network, Inc. (Staff Attorney: Kara Van Bockern)**

**TC07-005 In the Matter of the Filing for Approval of an Interconnection Agreement between Aventure Communication Technology, L.L.C. and Jefferson Telephone Company, LLC. (Staff Attorney: Kara Van Bockern)**

Ms. Kara Van Bockern stated that the companies have active Certificates of Authority the Agreements have been properly filed, have been properly executed and do not appear to contain discriminatory provisions. No comments were filed and Ms. Van Bockern recommended approval of the Agreements.

**Vice Chairman Hanson moved to approve the Agreements in Dockets TC07-001, TC07-002 and TC07-005. Chairman Johnson seconded and Commissioner Kolbeck concurred. Motion passed 3-0.**

Meeting adjourned.



Demaris Axthelm  
Administrative Secretary